

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

v.

SAN ANDREAS REGIONAL CENTER, Service Agency.

OAH No. 2023010442

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 9, 2023, by videoconference.

Claimant and claimant's parents appeared at the hearing.

Executive Director's designee James Elliott appeared for service agency San Andreas Regional Center (SARC).

The matter was submitted for decision on February 9, 2023.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from SARC?

FACTUAL FINDINGS

1. Claimant was born in 1997. She applied to SARC for Lanterman Act services in 2022, when she was 25 years old. After evaluating claimant, SARC denied her application. She appealed.

2. Claimant alleges that she qualifies under the Lanterman Act for services from SARC because she has autism spectrum disorder, and because this disorder constitutes a substantial disability for her. Claimant does not allege that she has any other qualifying developmental disability.

3. Based on neuropsychological evaluations claimant provided to support her application, SARC does not dispute that claimant has autism spectrum disorder. SARC denied Lanterman Act services to claimant because of its evaluation team's determination that claimant does not satisfy the criteria under the Lanterman Act and its implementing regulations for substantial disability.

4. SARC and claimant agree that the Lanterman Act and its implementing regulations require SARC to evaluate the degree of claimant's disability with reference to seven areas of major life activity: "(A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self-direction. (F) Capacity for independent living. (G) Economic self-sufficiency." (Welf. & Inst. Code, § 4512, subd. (1)(1); see also Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) Claimant alleges that her autism spectrum disorder is a qualifying developmental disability because it causes significant functional limitations for her in self-care, capacity for independent living, and economic self-sufficiency.

Claimant's Most Significant Autism Spectrum Disorder Traits

5. Claimant has experienced emotional and social challenges since early childhood. Mental health professionals have offered numerous diagnoses to explain these challenges, and claimant likely has multiple co-occurring psychological or neurological disorders. Autism spectrum disorder is the only diagnosis that may qualify claimant for Lanterman Act services, however.

6. Throughout her life, claimant has exhibited several behavioral characteristics that underlie her autism spectrum disorder diagnosis.

a. Claimant's social skills are, and always have been, poor. She experiences great difficulty recognizing other people's perspectives, or making inferences about their knowledge and emotions from their statements and behavior. When she participates in conversations she often misses nonverbal cues, interrupts, and fails or refuses to discuss ideas reciprocally. Claimant either lacks, or cannot effectively express, empathy and patience.

b. Claimant is hypersensitive to some sensory stimuli, such as bright lights, loud noises, and rough textures. Although she can concentrate on an activity that interests her in a distraction-free environment, she struggles in environments requiring her to attend to one task or sensory input among several, or to divide her attention among multiple demands. School records suggest, for example, that despite her interest in art, claimant struggled to participate in a high school art class because of the other students' noise and activity levels.

c. Claimant has shown strong ability throughout her life to learn information, but has not shown corresponding ability to apply that information to the

world around her. Her thinking is literal and rigid. She has never tolerated deviations from routine, and has shown little ability to adapt to or manage surprises.

7. The autism spectrum disorder characteristics summarized in Finding 6 have caused recurrent difficulty for claimant in her education and social life. From early childhood, and continuing through high school, many of claimant's teachers described her as disrespectful, argumentative, and disruptive. She could not work in groups with her classmates, and often refused to complete assignments or tests that she found repetitive, uninteresting, or beneath her self-perceived skill level. In addition, despite ongoing efforts since elementary school to teach claimant skills for organizing and managing her belongings (such as her books and clothing) and her assignments, claimant has never succeeded in learning such skills.¹ Claimant herself emphasized in testimony that although she can memorize multi-step processes that involve no interim choices ("computer-style"), she struggles with tasks that require her to evaluate multiple variables before proceeding from one step to the next.

Degree of Disability

8. Despite the challenges summarized in Finding 7, claimant has achieved several goals that are common among young adults who do not have developmental disabilities. In each case, however, claimant has achieved these goals only with significant, sustained parental support, far exceeding the parental support available to most children, adolescents, and young adults. Moreover, the unusual circumstances

¹ Claimant testified, ruefully but perceptively, that her failure to master such skills despite multiple people's efforts over many years to teach her implies logically that the "problem must be on my end."

under which claimant has achieved these successes do not imply that she will build on them in an age-appropriate manner.

a. Claimant completed high school in spring 2015. She attended 9th, 10th, and part of 11th grades at a local public high school, where she received special education services and where her teachers expressed consistent concern about her failure to participate effectively or respectfully in class activities. In 11th grade, claimant's mother moved to another city with claimant and claimant's twin sister specifically to permit the sisters to attend a private high school for "twice-exceptional" children (children who combine strong cognitive abilities with learning disabilities). This school offered a highly personalized instructional program, which for claimant and her twin included having each of them attend school only every other day. Claimant received a high school diploma from this school.

b. After high school, claimant enrolled in fall 2015 in a private university with a non-selective admissions policy. She attempted her first semester to live in a university dormitory, but was unable to develop a good relationship with her roommate. Moreover, she failed to develop a regular schedule for eating, sleeping, or attending her classes. For these reasons, after the first semester, claimant shared an apartment in her university's city with her father. He cooked their meals and did their laundry, attempting without success to teach claimant to perform these chores independently. Claimant's father also monitored claimant's assignments and class work, again attempting without success to engage claimant in taking personal responsibility for her own academic progress. Claimant used public transportation to get to and from her classes, but her father testified credibly that they rehearsed every trip and that even so she occasionally became lost or disoriented. Claimant graduated from this university in December 2020, with a bachelor's degree in art.

c. After several years' prompting from her parents, claimant obtained a California driver's license in April 2022, when she was 25. She is afraid to drive at night, in the rain, or on the freeway, because these conditions present too much visual complexity and require too many quick decisions.

9. Emilie Cate, Ph.D., is the SARC staff psychologist who participated in SARC's evaluation of claimant. She testified to describe how she and the evaluation team assessed claimant's abilities and limitations. Dr. Cate explained that minor differences between claimant and similar-age people in the activity categories stated in Finding 4 would not qualify claimant for Lanterman Act services. Rather, to evaluate whether claimant has significant functional limitations in these activities, Dr. Cate and her SARC colleagues considered whether claimant displays abilities that are among "the bottom 5 percent" of people at a similar developmental stage.

SELF-CARE OR SELF-DIRECTION

10. Dr. Cate testified that in evaluating claimant's "self-care" abilities, she and her colleagues considered whether claimant is capable of maintaining personal hygiene, of grooming and clothing herself appropriately, and of feeding herself.

11. Claimant acknowledges that she is physically and cognitively capable of performing the daily living activities described in Finding 10 independently. Claimant's weakness, according to all evidence, is that claimant neglects these essential activities unless someone prompts and reminds her.

12. According to Dr. Cate, SARC considers a person's ability to plan and manage self-care (as distinguished from the person's ability to carry it out) as an aspect of "self-direction." In addition to remembering to bathe, considering what clothing or grooming is appropriate, and choosing nutritious foods at regular intervals,

Dr. Cate identified managing medications and health care appointments, following a daily schedule, and regulating one's emotional responses as aspects of self-direction.

13. Dr. Cate and her colleagues considered claimant to show significant functional limitations in self-direction, deriving from claimant's autism spectrum disorder. This opinion is consistent with all evidence, and is persuasive.

CAPACITY FOR INDEPENDENT LIVING

14. To evaluate claimant's capacity for independent living, Dr. Cate and her SARC colleagues assessed whether claimant understands essential household activities such as shopping, cleaning, and cooking; whether claimant can be alone safely; whether claimant understands and can manage money; and whether claimant can travel independently in her community.

15. Dr. Cate testified that claimant's autism spectrum disorder limits claimant only minimally in her capacity for independent living. She believes that claimant's challenges thus far in independent living reflect primarily her deficits in self-direction, and notes as well that claimant has thus far experienced few true opportunities for independence that might test claimant's limits.

16. Claimant and her parents credibly painted a different picture. Although claimant can use a microwave oven to heat and reheat things, she cannot use a gas stove safely. She cannot prepare even packaged foods that are not ready to eat, because she cannot follow the preparation instructions. Claimant reads her mail, and her email, irregularly and inattentively. She has a bank account, established for her by her father, and can make purchases but cannot pay bills timely or budget. Claimant takes medication as prescribed, with reminders, but cannot maintain an adequate supply of medication in her home despite her parents' multi-year efforts to teach her

to plan ahead for refills. Although claimant used public transportation while in college, she sometimes became lost even after having taken the same route many times, and could not choose a new route to a new place by herself.

17. The activities and skills Dr. Cate characterized as self-direction unquestionably affect a person's capacity for independent living. Nevertheless, the Lanterman Act identifies self-direction and capacity for independent living as distinct components of overall ability or disability. For this reason, Dr. Cate's opinion that SARC should consider the matters described in Finding 16 solely as deficits in self-direction is not persuasive.

18. Claimant's obvious cognitive strengths, and the strong safety net her parents have provided, complicate any assessment of her capacity for independent living. The matters stated in Findings 7, 8.b, and 16, show, however, that claimant's autism spectrum disorder creates significant functional limitations in her capacity for independent living.

ECONOMIC SELF-SUFFICIENCY

19. Dr. Cate testified that claimant's employment history and college degree show that she does not have substantial limitations on her potential economic self-sufficiency.

20. Claimant has been employed since graduating from college, but only intermittently. She worked briefly and seasonally in a photography processing business in late 2021, and at the time of the hearing worked part-time as a social media marketing assistant. Claimant also has worked as a dog sitter.

21. Although claimant aspires to an art career, consistent with her college education, she has demonstrated little prospect since 2020 that she will find employment in this field. She and her mother estimate that she has applied, and presented a portfolio, for hundreds of positions but has received an interview for only one and has received no job offers.

22. Claimant received unemployment benefits in early 2022, but only because her mother assisted her in applying and reminded her repeatedly to make required reports on her efforts to find a new job.

23. Claimant's employment experience confirms that her autism-related social deficits strongly limit her employment opportunities, for at least three reasons. First, throughout her life as summarized in Finding 7, claimant has been incapable of relating to or cooperating with peers, and incapable of taking direction from authority figures. Second, claimant's combination of cognitive strength and social weakness gives her unrealistic expectations about her prospects and abilities.² Third, the sensory sensitivities summarized in Finding 6.b present challenges for claimant in environments with more than one or a few other people.

24. In light of all the matters stated in Findings 6, 7, and 20 through 23, Dr. Cate's opinion regarding claimant's potential for economic self-sufficiency is not

² Richard Alloy, Ph.D., a neuropsychologist who evaluated claimant when she was nine years old, described her as "trying to overachieve to a grandiose degree," despite "oversimplification or disregard of the basic information needed for adequate processing."

persuasive. Claimant's autism spectrum disorder causes significant functional limitations in her potential economic self-sufficiency.

LEGAL CONCLUSIONS

1. To establish eligibility for SARC's services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that (1) she suffers from a developmental disability and (2) she is substantially disabled by that developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a).)

2. Disabilities that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (Welf. & Inst. Code, § 4512, subd. (a).) They also include "disabling conditions found to be closely related to intellectual disability, or to require treatment similar to that required for individuals with an intellectual disability." (*Id.*) In any case, the "developmental disability" must originate before the person turns 18, and must be lifelong. (*Id.*)

3. A qualifying disability must be "substantial," meaning that it causes "significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self-direction. (F) Capacity for independent living. (G) Economic self-sufficiency." (Welf. & Inst. Code, § 4512, subds. (a), (1)(1); see also Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).)

4. The matters stated in Findings 3, 13, 18, and 24 establish that claimant's autism spectrum disorder is a substantially disabling developmental disability for claimant. These matters qualify her under the Lanterman Act for SARC's services.

ORDER

Claimant's appeal is granted. Claimant has established her eligibility under the Lanterman Act for services from SARC.

DATE:

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.